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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOHN SCHEUPLEIN, Plaintiff and Appellant, v. CITY OF WEST COVINA et al., Defendants and Respondents.	B206203 (Los Angeles County Super. Ct. No. KC048977)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Dan Oki, Judge. Affirmed.

Oldman, Cooley, Sallus, Gold, Birnberg & Coleman, Ronald Gold, Jamie N. Gonzalez, and Julia S. Berkus; Law Offices of Norman Hoffman and Norman Hoffman; Capital Advocates and Ravinder Mehta for Plaintiff and Appellant.

Alvarez-Glasman & Colvin, Arnold M. Alvarez-Glasman, City Attorney (West Covina), and Matthew M. Gorman, Deputy City Attorney; Squire, Sanders & Dempsey, Stephen T. Owens, James H. Broderick, Jr., and Stacie D. Yee for Defendants and

Respondents City of West Covina, City of West Covina Community Development Commission, Steve Herfert, Shelley Sanderson, and Sherri Lane.

Jackson, DeMarco, Tidus & Peckenpaugh, Michael L. Tidus, M. Alim Malik, and Kathryn M. Casey for Defendant and Respondent Michael Touhey.

Appellant John Scheuplein sued respondents City of West Covina (city), City of West Covina Community Development Commission (commission), and city council members Michael Touhey, Steven Herfert, Shelley Sanderson, and Sherri Lane (council members) "for injunctive relief from violations of Political Reform Act."[1] The trial court granted respondents' special motion to strike the complaint under Code of Civil Procedure section 425.16, the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, and dismissed the complaint.[2] In this appeal from the judgment of dismissal and order awarding attorney fees and costs, we reject Scheuplein's contentions and affirm.

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[1] In relevant part, the conflict of interest provisions of the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) (Political Reform Act) prohibit state and local public officials from making, participating in making, or in any way attempting to use their official positions to influence governmental decisions in which they know or have reason to know they have a financial interest. (*Id.*, § 87100.) The Act's provisions may be enforced by private actions for injunctive relief. (*Id.*, § 91003, subd. (a).)

[2] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure. Section 425.16 provides in relevant part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

BACKGROUND

At the outset, we note that Scheuplein's complaint is virtually indistinguishable from the cross-complaint filed by Ziad Alhassen in the city's tax collection action against Alhassen and his related business entities. (*City of West Covina v. Hassen Imports Partnership* (Super. Ct. L.A. County, No. KC048157 (*Hassen Imports*)).[3] Alhassen filed the cross-complaint against all of the respondents herein except Councilmember Lane. The cross-complaint alleged that the three cross-defendant council members had voted to file the *Hassen Imports* action in violation of the conflict of interest provisions of the Political Reform Act, and sought to enjoin the action as a violation of the Act. After the cross-defendants successfully moved to strike Alhassen's cross-complaint under the anti-SLAPP statute, Alhassen appealed from the resulting judgment of dismissal and attorney fee award, which we affirmed in a prior appeal. (*City of West Covina v. Hassen Imports Partnership* (Mar. 27, 2008, B195660) [nonpub. opn.], hereinafter B195660.)[4]

In the present action, Scheuplein's complaint, which was drafted by Alhassen's attorneys, is almost identical to Alhassen's dismissed cross-complaint. It alleges the same conflict of interest violations against the same defendants (plus Councilmember Lane), and also seeks injunctive relief to dismiss the *Hassen Imports* action against Alhassen.

The same trial court that dismissed Alhassen's cross-complaint also dismissed Scheuplein's complaint after granting respondents' special motion to strike. In this appeal from the judgment of dismissal, Scheuplein argues in part that the complaint is exempt from the anti-SLAPP statute under section 425.17's public interest exception, which is an issue that was not raised in Alhassen's appeal.

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[3] Alhassen and his related business entities (Hassen Imports Partnership, Hassen Imports, Inc., West Covina Motors, Inc., and Hassen Holdings Company [collectively, Alhassen]) are not parties to this action.

[4] On April 3, 2009, we granted respondents' request to take judicial notice of our prior opinion in *Hassen Imports.*

Section 425.17, subdivision (b) provides that the anti-SLAPP statute "does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist: [¶] (1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision. [¶] (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons. [¶] (3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." (§ 425.17, subd. (b).)

In order for section 425.17's public interest exception to apply, the action must be brought *solely* in the public interest to secure a public benefit. (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 318.) "If individualized relief is sought, a plaintiff must satisfy the requirements of the anti-SLAPP statute in order for the action to proceed." (*Id.* at p. 320.) Respondents contend the trial court correctly held that the public interest exception does not apply because Scheuplein's primary motives for bringing this action included his expectation of being compensated for acting as Alhassen's proxy.

I. Alhassen's Cross-complaint in *Hassen Imports*

According to Alhassen's cross-complaint, respondent Councilmembers Touhey, Herfert, and Sanderson violated the Political Reform Act's conflict of interest provisions by voting to file the *Hassen Imports* action against Alhassen after receiving "gifts with a value in excess of $1,000 from [Alhassen's] 'direct business competitors' in which the council members had management or ownership interests. The [cross-complaint] alleged that in order to further their own economic interests, the council members directed the Commission to create the appearance of a tax revenue shortfall by refusing to give [Alhassen] proper credit for tax revenue generated by [Alhassen's] business, and by

voting to approve the filing of the underlying lawsuit, knowing it was baseless. The [cross-complaint] prayed for injunctive relief setting aside the council members' financial transactions found to be conflicts of interest, enjoining future violations and enjoining the prosecution of the underlying lawsuit or taking any action on [Alhassen's] contracts with the Commission." (B195660, at p. 4.)

The cross-defendants moved to strike Alhassen's cross-complaint under the anti-SLAPP statute, as a meritless action arising from protected speech or petition activities in connection with a public issue. The trial court granted the motion and dismissed the cross-complaint. In Alhassen's appeal from the judgment of dismissal, he challenged the applicability of the anti-SLAPP statute to causes of action brought under the Political Reform Act. He argued that because the anti-SLAPP statute imposes an automatic stay on discovery (§ 425.16, subd. (g)), it "forecloses a plaintiff's ability to establish a probability of prevailing, as required by section 425.16, subdivision (b)(1), and thus, actions under the [Political Reform Act] face unavoidable dismissal." (B195660, p. 6.) He contended that in light of the anti-SLAPP statute's discovery restrictions, applying the statute to actions under the Political Reform Act would result in an unconstitutional amendment of the Act.

In rejecting Alhassen's contentions, we noted that, in any event, his reliance upon the Political Reform Act to enjoin the prosecution of a lawsuit was misplaced. We stated in relevant part: "Appellants may not obtain an injunction against the underlying lawsuit, as no cause of action will lie to enjoin ongoing litigation, except to avoid a multiplicity of lawsuits. (Code Civ. Proc., § 526; Civ. Code, § 3423.) The prohibition against such injunctive relief predates the [Political Reform Act]. (See *Johnson v. Sun Realty Co.* (1934) 138 Cal.App. 296, 301-302.)" (B195660, at p. 4, fn. 5.)

II. Scheuplein's Complaint in This Action

Scheuplein filed the first amended complaint in this action while respondents' anti-SLAPP motion was pending in Alhassen's cross-action. Both actions were assigned

to the same trial court as related cases. Scheuplein does not deny the obvious similarities of the two pleadings or the accuracy of respondents' charts illustrating those similarities.

In opposition to respondents' special motion to strike, Scheuplein argued that this action was exempt from the anti-SLAPP statute under section 425.17's public interest exception, and that it was respondents' burden to show that the exception does not apply. Several days before the hearing on respondents' motion, Scheuplein requested a continuance in order to conduct limited discovery regarding the council members' financial interests in decisions allegedly made in violation of the Political Reform Act and Government Code section 1090.[5] (§ 425.16, subd. (g) ["The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision."].) However, the trial court issued a tentative ruling to deny the special motion to strike based on section 425.17's public interest exception, which led Scheuplein to withdraw his request for a continuance. Respondents then requested a continuance in order to conduct limited discovery regarding the public interest exception, particularly Alhassen's role in "financing or supporting this lawsuit."

At the initial January 10, 2007 hearing on respondents' motion, the trial court granted respondents' request for a continuance in order to conduct limited discovery as to "whether or not Mr. Scheuplein is acting as an [alter ego] of Mr. Alhassen in this action so that it's not necessarily a public interest lawsuit but one of personal interest." As a condition of granting the continuance, the trial court ordered respondents to respond to Scheuplein's previous document requests. Scheuplein's discovery efforts regarding Touhey's financial interests resulted in several writ proceedings.

Pursuant to a stipulation and order, respondents deposed Scheuplein and Alhassen in the presence of a discovery referee. During the depositions, a dispute arose concerning Scheuplein's production of certain computer documents. The dispute prompted the discovery referee to appoint James Vaughn, a certified forensic computer examiner, as a

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[5] Government Code section 1090 prohibits city officers or employees from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

neutral expert. (Evid. Code, § 730.) The discovery referee ordered Vaughn "to image and examine" Scheuplein's computers "to recover certain specified documents, including email and any attachments thereto, whether those documents have been 'deleted' or remain active in the Plaintiff's computer." According to Vaughn's declaration, he complied with this order by searching Scheuplein's computers for certain key terms that were provided by both counsel. Vaughn transferred the resulting documents to CD's, which he gave to the discovery referee and Scheuplein's attorneys. The referee ruled on Scheuplein's privilege objections before providing respondents with copies of the retrieved documents. Vaughn then reviewed the copies to confirm that they were the same documents that were recovered from Scheuplein's computers.

Upon completing the limited discovery allowed by the trial court under the referee's supervision, both parties filed supplemental papers regarding the special motion to strike.

Respondents submitted the emails recovered from Scheuplein's computers and his deposition testimony to show that section 425.17's public interest exception does not apply because Scheuplein filed this action as Alhassen's proxy, for which he expected to be compensated. Respondents relied on the emails and Scheuplein's testimony to establish the following. Alhassen was a contributor to Scheuplein's prior city council campaigns. Shortly before Alhassen's cross-complaint was dismissed, he invited Scheuplein to a meeting with his attorneys to discuss filing this almost identical action. At the meeting, Scheuplein agreed to allow Alhassen's attorneys to file this action in his name, which he knew would assist Alhassen. From the inception of this lawsuit, Alhassen directed the course of this litigation. He not only approved the draft of Scheuplein's complaint, he also received litigation-related information and documents from the attorneys that were not shared with Scheuplein. Eventually, Scheuplein complained in an email to the attorneys that he had "to beg this firm to be kept informed in a case that bears my name as the Plaintiff, to no avail." The attorneys used this action as a vehicle to propound discovery relevant only to Alhassen's dispute with the city in *Hassen Imports*.

Respondents argued that it was reasonable to infer from Scheuplein's testimony and emails that Alhassen was financing this litigation and that Scheuplein expected to be compensated for allowing his name to be used as Alhassen's proxy. According to Scheuplein's testimony, he had told Alhassen's attorneys before agreeing to file this action that he could not afford to pay them. He had not entered into fee agreements with all of the attorneys representing him, nor had he paid any of them. Although he signed a $10,000 attorney fee check, the check had never been delivered or deposited and he did not have the funds to cover that amount. Scheuplein did not know how the attorneys will be paid.

Respondents urged the court to infer from an email written by Scheuplein that he expected to be compensated for bringing this action. Scheuplein sent the email to Alhassen and their joint attorneys, to raise his concerns regarding the possible addition of another plaintiff to this action. In the email, he listed among his concerns, "[t]he details as to my payment and compensation arrangements for the suit." Based on this email, respondents argued that "Scheuplein apparently expects to be paid for his role as the plaintiff in this lawsuit." (Emphasis omitted.)

Respondents also submitted Alhassen's deposition testimony to show that Scheuplein did not file this action solely in the public interest. Respondents relied on Alhassen's testimony that he had no personal knowledge of wrongdoing and the conflict of interest allegations in his cross-complaint were based solely on information gleaned from public records.

In opposition to the motion, Scheuplein argued that the emails recovered from his computers were inadmissible. He argued that the emails were not properly authenticated because Vaughn could not verify their substance, which only he could do. However, Scheuplein did not submit a declaration denying his authorship of the emails, the substance of the emails, or that he expected to be compensated for filing this action. Instead, he argued that the emails were inadmissible "because (1) no competent testimony establishes the authenticity of such evidence (Evid.C. §§ 1400, 1401); (2) no competent, foundational evidence establishes its admissibility as secondary evidence

(Evid.C. § 1521); and (3) the evidence is inadmissible hearsay and multiple hearsay. (Evid.C. §§ 1200, et seq.)"

Scheuplein also objected to the admissibility of Alhassen's deposition testimony. He contended that because Alhassen is not a party to this action, his deposition testimony may only be used for impeachment, contradiction, or other purposes set forth in section 2025.620, subdivision (c). Scheuplein contended that he was not bound by Alhassen's lack of knowledge of any wrongdoing, given the lack of any "evidence of agency, alter ego, or other doctrine that would bind Plaintiff by the lack of knowledge of a third party." He also argued that Alhassen's testimony was replete with irrelevant and inadmissible hearsay statements, opinions, and conclusions for which there was no "foundational showing of personal knowledge."

Scheuplein submitted Touhey's public financial disclosure statements and the city council's agendas and minutes to show there was a probability that he would prevail on his conflict of interest claims. Scheuplein argued that Touhey's financial statements coupled with the city council's agendas and minutes were sufficient to create a "prima facie case of Defendants' (Touhey's in particular) violation of Government Code section 1090." He asserted that Touhey "was influenced by the hundreds of thousands of dollars of income paid to him by the beneficiaries of [the City Council's] official actions," and that his "continuing membership on the City Council presumptively 'influenced other members of the council' in violation of Section 1090." Scheuplein submitted no evidence, however, regarding the other three respondent council members' financial interests or of any contracts entered into by the city in violation of Government Code section 1090.[6]

In addition to the filing of the *Hassen Imports* action, Scheuplein identified the following actions as conflict of interest violations: (1) Touhey's "participation in the four variances issued to the McIntyre Company"; (2) Touhey's presence during the vote (from

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[6] Government Code section 1090 violations can only occur with respect to the making of contracts. (*People v. Honig* (1996) 48 Cal.App.4th 289, 329.)

which he abstained) to approve a staff and commission recommendation to enter into a "purchase and sale agreement for Lots 700 and 750" with The Charles Company, which is listed on Touhey's 2005 financial disclosure statement as "one of his numerous $10,000+ donors of income"; and (3) Touhey's participation in the vote to approve the city's renewal of its insurance coverage through a collective association of cities called "BICEP (Big Indep[endent] Cities Excess Pool Powers Authority)," whose general manager, Ken Spiker & Associates, is listed on Touhey's 2006 financial disclosure statement as the source of "between tens and hundreds of thousands of dollars."

On February 19, 2008, the trial court conducted the second hearing on respondents' special motion to strike. The trial court overruled Scheuplein's evidentiary objections to the emails and Alhassen's deposition testimony. The court found that Vaughn was qualified to authenticate the documents retrieved from Scheuplein's computers, and that the substance of the "e-mails were, at least in part, acknowledged by the plaintiff himself and are, consequently, found to be admissible." The court found that Alhassen's testimony "regarding payments made to the plaintiff" was "relevant and admissible to impeach plaintiff's claim of a lack of personal interest in the prosecution of this action."

As for section 425.17's public interest exception, the trial court found that respondents had shown the exception was inapplicable because Scheuplein was primarily motivated to file this action by his expectation of compensation for his efforts. The court stated: "The plaintiff's pecuniary interests, with respect to potential compensation for litigating this action, have now been shown to be one of the principal motivations for the filing of this case, as demonstrated by the defendants' evidence. That the motivation may be extrinsic to the pleadings is of no moment, since the ascertainment of truth in connection with these legal proceedings is a part of an assessment of whether or not the statutory requirements for exemption under CCP § 425.17 . . . have been met." The court concluded that even if Scheuplein is liable to his attorneys for the fees incurred in bringing this litigation, the evidence showed there was "no reasonable likelihood" that he will ever be able to pay them.

Having determined that the public interest exception was inapplicable, the court turned to the first prong of section 425.16, subdivision (b)'s two-step process, which requires the moving party to show that the claims arose from acts in furtherance of the right of petition or free speech in connection with a public issue. Each of the actions identified by Scheuplein as conflict of interest violations involved the respondent council members' (particularly Touhey's) participation or presence during city council meetings at which certain actions were discussed or approved. The court concluded that because "[t]he conduct of public officials in discussing and voting on a public entity's action or decision may constitute an exercise of rights protected under the anti-SLAPP statute," respondents had carried their burden under the first prong of the statute.

The court next considered the second prong of section 425.16, subdivision (b), which requires the plaintiff to establish a probability of success on the merits.[7] The court found that Scheuplein had failed to show there was a probability he would prevail on his claims under Government Code section 1090, which prohibits city officers or employees from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." The trial court concluded that

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[7] The trial court summarized Scheuplein's evidence as follows: "According to plaintiff, the evidence shows that, while acting as the CEO of The Michael Touhey Company in 2005, Touhey received more than $100,000.00 of income from, among other donors, the Charles Company, the McIntyre Company, D.C. Corporation, Gross Egg Ranch, and Abell-Helou. [Record citations omitted.] The same occurred in 2006. [Record citation omitted.] This income, plaintiff argues, constitutes a 1090 violation [citations], when seen in conjunction with the fact that defendant Touhey was a council member at the time the West Covina City Council approved re-zoning affecting a McIntyre Company project. [Record citation omitted.] The plaintiff contends that Touhey's abstention from the vote is of no consequence, since a public officer cannot escape liability for a 1090 claim merely by abstention from a vote; membership on the voting entity itself establishes a presumption of participation in the forbidden transaction. [Citations.] In addition, the plaintiff draws attention to defendant Touhey's July 2006 participation in four variances issued to the McIntyre Company, as well as renewal of insurance coverage through a general agent, Ken Spiker & Associates, which contributed tens of thousands of dollars to Touhey. [Record citation omitted.] The plaintiff asserts that these facts create a presumption of influence on the other council members as well."

Scheuplein's failure to identify any contracts made in violation of Government Code section 1090 was fatal to his probability of success: "It appears that the plaintiff has demonstrated that some actions taken by the City Council have been in the interest of some political contributors. This showing, however, does not necessarily describe a violation of Gov C § 1090. Gov C § 1090, et seq., provides that officials shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. [Citations.] It does not necessarily forbid city officers from voting in the interest of political campaign contributors. See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1230."

Based on its determination that Scheuplein had failed to meet his burden under the second prong of section 425.16, the trial court granted respondents' special motion to strike. The court entered a judgment of dismissal on February 25, 2008.

On May 14, 2008, the trial court heard respondents' motion for attorney fees and costs under section 425.16, subdivision (c).[8] After reducing the requested amounts, the trial court awarded respondents $910,780.73 in fees and costs. The award consisted of $650,000 in fees and $40,827.68 in costs to Alvarez-Glasman & Colvin and Squire, Sanders & Dempsey, and $215,000 in fees and $4,953.05 in costs to Jackson, DeMarco, Tidus & Peckenpaugh.

Scheuplein filed timely notices of appeal from both the February 25, 2008 judgment of dismissal and the June 10, 2008 order for fees and costs. We granted respondents' motion to consolidate the two appeals.

Scheuplein argues on appeal that: (1) the emails and Alhassen's deposition testimony should have been excluded; (2) in any event, the evidence supports a finding that this action was brought solely in the public interest; (3) accordingly, this action is exempt from the anti-SLAPP statute based on section 425.17's public interest exception; (4) alternatively, the order granting the special motion to strike must be reversed because

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[8] "In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. . . ." (§ 425.16, subd. (c).)

this action does not arise from the valid exercise of free speech or petition rights, and there is a probability he will prevail on the merits; and (5) the order awarding over $900,000 in attorney fees and costs for the anti-SLAPP motion must be reversed as presumptively unreasonable and, with respect to the city and the council, the attorney fee award conflicts with the Political Reform Act.

DISCUSSION

Section 425.16 was enacted to deter "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) In order to end such lawsuits in a timely and cost-effective manner, the Legislature established "'a procedure where the trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation.' (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192; see *Jarrow Formulas, Inc. v. LaMarche* [(2003)] 31 Cal.4th [728,] 737 [section 425.16 'is a procedural device for screening out meritless claims'].)" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278 (*Soukup*).)

Under section 425.16, subdivision (b)'s two-step process, the trial court first determines whether the moving party has made a threshold showing that the cause of action is one arising from protected speech or petitioning activity and, if so, whether the opposing party has demonstrated a probability of prevailing on the claim. (*Soukup, supra,* 39 Cal.4th at p. 278.) The special motion to strike may be granted only if both prongs of the statute have been met. (*Ibid.*)

Whether section 425.17's public interest exception applies is a "threshold issue" that falls under the first prong of section 425.16, subdivision (b)'s two-step process in which respondents, as the moving party, bear the burden of proof. (*Navarro v. IHOP Properties, Inc.* (2005) 134 Cal.App.4th 834, 840; *Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 329-330.) We note, however, that the Supreme Court is currently considering whether the exception's applicability falls under the second

prong of section 425.16, subdivision (b)'s two-step process and, therefore, must be established by the plaintiff as the party claiming the exemption. (*Simpson Strong-Tie Co., Inc. v. Gore* (2008) 162 Cal.App.4th 737, review granted July 30, 2008, No. S164174.)

"'Review of an order granting or denying a motion to strike under section 425.16 is de novo. (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1056.) We consider "the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) However, we neither "weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)' (*Soukup v. Hafif, supra*, 39 Cal.4th at p. 269, fn. 3.)" (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.)

I. Respondents' Evidence Was Properly Admitted

In concluding that section 425.17's public interest exception does not apply to this action, the trial court inferred from respondents' evidence that Scheuplein's primary motives for filing this lawsuit included his expectation of being compensated for assisting Alhassen to circumvent the dismissal of his nearly identical cross-complaint. On appeal, Scheuplein argues that the inference was based on inadmissible evidence that was admitted after the trial court erroneously overruled his objections. We disagree.

A. The Email Messages Were Properly Admitted

Scheuplein argues that the email messages were not authenticated to meet the business records exception to the hearsay rule. (Citing *In re Vee Vinhnee* (2005) 336 B.R. 437, 446.) He alternatively argues that Vaughn was incapable of authenticating the substance of the emails as required by Evidence Code section 1401. The contentions lack merit.

In resolving this issue, we distinguish between "the admissibility of [a] document and the weight to be accorded it. Authentication of a writing is required before it may be received in evidence. (Evid. Code, § 1401, subd. (a).) Authentication of a writing is defined as (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law. (Evid. Code, § 1400.) If, however, there is sufficient evidence to sustain a finding that the writing is what the proponent claims, the authenticity of the document becomes a question of fact for the trier of fact. (*Chaplin v. Sullivan* [(1945)] 67 Cal.App.2d 728, 734.)" (*McAllister v. George* (1977) 73 Cal.App.3d 258, 262.)

In this case, the trial court found that the emails were sufficiently authenticated by Vaughn's declaration to establish that the emails were retrieved from Scheuplein's computers and the printouts were accurate representations of the retrieved messages. The verification of the substance and authorship of the emails presented a question of fact for the trial court. (*Chaplin v. Sullivan*, *supra*, 67 Cal.App.2d at p. 734.) "[T]he authorities generally concede that under proper facts and circumstances the authenticity or genuineness of a letter may be established by indirect or circumstantial evidence . . . . Among other things upon which reliance may be placed is that a letter states facts which could only be known to or relate to the purported writer." (*Ibid.*) If "there was sufficient evidence to support its apparent conclusion that they were authentic, [the trial court's] conclusion is binding upon an appellate court." (*Ibid.*)

Here, the trial court found that the emails "were, at least in part, acknowledged by the plaintiff himself." Scheuplein fails to address this aspect of the trial court's ruling, nor does he discuss the fact that the emails related to matters only he could have known about regarding this lawsuit. Accordingly, the record contains sufficient evidence to support the trial court's finding that they were genuine.

As for Scheuplein's hearsay objection, his assertion that respondents did not meet the requirements of the business records exception misses the mark because the emails were not admitted as business records. Accordingly, we need not discuss Scheuplein's

reliance on *In re Vee Vinhnee, supra*, 336 B.R. 437, 446. The applicable exception to the hearsay rule is found in Evidence Code section 1220, which provides: "Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity."

B. Alhassen's Testimony Was Properly Admitted for a Limited Purpose

Scheuplein argues that Alhassen's testimony should have been excluded because it contained: (1) largely irrelevant material that did not impeach Scheuplein's testimony or evidence; (2) numerous opinions, conclusions, and statements that lacked foundation and were not based on personal knowledge; and (3) numerous inadmissible hearsay statements. We are not persuaded.

"'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) "In applying this standard, the court is given wide discretion to determine relevance under the code. [Citation.] The appellate court should reverse only when a prejudicial abuse of discretion has occurred. [Citation.]" (*DePalma v. Westland Softward House* (1990) 225 Cal.App.3d 1534, 1538.)

According to the trial court's order, it relied on only the portion of Alhassen's testimony "regarding payments made to the plaintiff." Scheuplein does not dispute that this evidence is relevant or that Alhassen had sufficient personal knowledge to testify to the matter. Even if we assume that other portions of the testimony involved matters that were inadmissible for the reasons stated by Scheuplein, nothing in the trial court's order demonstrated its reliance on those portions of the testimony. Scheuplein does not explain how excluding those portions of the testimony would have changed the outcome below.

"An appealed-from judgment or order is presumed correct. [Citation.] Hence, the appellant must make a challenge. In so doing, he must raise claims of reversible error or

other defect [citation], and 'present argument and authority on each point made' [citations]. If he does not, he may, in the court's discretion, be deemed to have abandoned his appeal." (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Accordingly, Scheuplein has failed to establish the existence of reversible evidentiary error.

II. The Action Was Not Brought Solely in the Public Interest

In finding that this action was not brought solely in the public interest, the trial court stated that Scheuplein's "pecuniary interest[], with respect to potential compensation for litigating this action" was among his principal motives for filing this case. Scheuplein challenges this finding as erroneously based on a single ambiguous email message expressing his concern regarding "[t]he details as to my payment and compensation arrangements for the suit" (the email). Scheuplein contends that this email is "far from conclusive as it could have, and did, mean that Scheuplein was concerned about the payment and compensation arrangements of his lawyers, and not of himself. In fact, at the February 2008 hearing on the Anti-SLAPP Motion, Scheuplein's lawyers submitted this proposition to the trial court and offered to obtain a declaration from Scheuplein attesting to this fact. [Record citation omitted.]"

Scheuplein's contention that the court relied exclusively on this single email is belied by the record. According to the February 19, 2008 reporter's transcript, the trial court stated that it was also relying on the following evidence: "The number of meetings between Mr. Alhassen and Mr. Scheuplein; the fact that Mr. Alhassen reviewed potential pleadings in this matter before they were even sent to Mr. Scheuplein, the named plaintiff in this matter; the fact that Mr. Scheuplein issued a $10,000 check for attorney's fees that was never negotiated and for which he had no money in the bank to cover it; the twice monthly meetings between Mr. Scheuplein and Mr. Alhassen; the at least twice monthly telephone calls precipitating those meetings; and the numerous e-mail correspondence that have now been produced for the court."

The record supports but one reasonable conclusion, which is that Scheuplein was motivated primarily by his desire to be compensated for filing this action as Alhassen's

proxy. Given that the supporting evidence was submitted with respondents' supplemental moving papers more than a month before the hearing, Scheuplein had ample opportunity to submit a declaration denying that he was motivated by the prospect of personal gain. As respondents correctly point out, Scheuplein's belated offer to submit a declaration on the date of the hearing was properly rejected as untimely.

III. The Public Interest Exception Does Not Apply

Scheuplein argues that his motives for bringing this action are irrelevant in determining whether section 425.17's public interest exception applies, because none of the relief sought in the complaint would have benefited him personally. We disagree with Scheuplein's broad interpretation of the exception.

"[B]ecause section 425.17[, subdivision] (b) is a statutory exception to section 425.16, it should be narrowly construed. [Citation.]" (*Club Members for an Honest Election v. Sierra Club*, *supra*, 45 Cal.4th 309, 316.) "Section 425.17[, subdivision] (b)'s exception applies only to actions brought 'solely in the public interest or on behalf of the general public.' Use of the term 'solely' expressly conveys the Legislative intent that section 425.17[, subdivision] (b) not apply to an action that seeks a more narrow advantage for a particular plaintiff. Such an action would not be brought 'solely' in the public's interest. The statutory language of 425.17[, subdivision] (b) is unambiguous and bars a litigant seeking 'any' personal relief from relying on the section 425.17[, subdivision] (b) exception. [Fn. omitted.]" (*Ibid.*)

Given that Scheuplein's primary motives for filing this action included his desire for compensation, he was motivated by personal gain. "The public interest criteria [set forth in section 425.17, subdivision (b)] also make clear that suits motivated by personal gain are not exempted from the anti-SLAPP motion. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 515 (2003-2004 Reg. Sess.) as amended May 1, 2003, pp. 13-14 . . . .)" (*Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050, 1066.)

Scheuplein argues that the section 425.17, subdivision (b) exception applies to this case because he will not receive any greater benefit than will the general public if he prevails on his claims. However, there are several other factors to consider. First, Alhassen, who is barred by the doctrine of res judicata from bringing this action in his own name,[9] encouraged Scheuplein to allow his attorneys to file this identical action in Scheuplein's name. Second, Scheuplein informed Alhassen's attorneys before they filed this action that he could not afford to pay them. Third, because the complaint specifically sought to dismiss the *Hassen Imports* action, Alhassen will personally benefit if Scheuplein prevails. And fourth, Scheuplein's primary motives for bringing this litigation included his expectation of being compensated for filing this action as Alhassen's proxy.

Based on these factors, we conclude Alhassen and Scheuplein are so closely aligned in this litigation that Scheuplein's compliance with section 425.17, subdivision (b)(1)'s requirement may not be determined based solely on whether the face of the complaint seeks any relief for the plaintiff that is greater than or different from the relief sought for the general public. In light of their identity of interests, we believe that just as Alhassen is not entitled to claim the exception because of the personal benefit that would flow from the dismissal of the *Hassen Imports* action, Scheuplein is not entitled to claim the exception because he is Alhassen's proxy. Accordingly, Scheuplein's failure to meet the requirement of section 425.17, subdivision (b)(1) renders the public interest exception

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9 """Res judicata" describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.' (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) 'A predictable doctrine of res judicata benefits both the parties and the courts because it "seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration."' (*Id.* at p. 897, italics omitted.)" (*Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 683.)

inapplicable.[10] In view of this determination, we need not reach Scheuplein's remaining contentions regarding section 425.17, subdivisions (b)(2) (whether the action, if successful, will enforce an important right affecting the public interest and will confer a significant benefit on the general public or a large class of persons), and (b)(3) (whether the plaintiff's pursuit of this action places a disproportionate financial burden on him in relation to his stake in this matter).

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10 The cases cited by Scheuplein are distinguishable. In *Northern Cal. Carpenters Regional Council v. Warmington Hercules Associates* (2004) 124 Cal.App.4th 296, the plaintiff union filed an unfair business practices action (Bus. & Prof. Code, § 17200) for injunctive relief, restitution, and an equitable accounting for alleged contractual and statutory wage violations. The defendants filed a special motion to strike the complaint under the anti-SLAPP statute, which was denied under section 425.17's public interest exception. Unlike this case, there was no evidence in *Warmington* that the union had filed the action as a proxy for one who was barred by the doctrines of res judicata or collateral estoppel from filing the action in his or her own name.

In *Smith v. Silvey* (1983) 149 Cal.App.3d 400, the appellate court reversed an injunction under section 527.6 that restrained the defendant from initiating complaints with public agencies against the operators of a mobilehome park regarding their operation of the park. The court concluded that the right to file complaints with governmental agencies is a fundamental constitutional right and that the act of filing a complaint "cannot be classified as a harassing 'course of conduct' within the definition of section 527.6, subdivision (b)." (*Id.* at p. 406.) In this context, the court stated, "a proper motive in bringing such action is irrelevant. As exasperating as [defendant's] conduct must have been to [plaintiff], [defendant] was constitutionally protected in exercising his right of petition to administrative agencies, or the executive branch of government, irrespective of the considerations that prompted his actions." (*Ibid.*) *Smith* is distinguishable because it did not involve a special motion to strike.

In *Dalrymple v. United Services Auto. Assn.* (1995) 40 Cal.App.4th 497, the issue was whether the trial court or the jury should decide if the insurer had proper cause to pursue a declaratory relief action. In this context, the court stated that, "because proper cause to file a declaratory relief action is evaluated against an objective standard [citation] and the insurer's motive in filing a declaratory relief action is irrelevant, the presence of a factual dispute concerning [the insurer's] motives in deciding to initiate and pursue the declaratory relief action would not present issues requiring jury resolution." (*Id.* at p. 519.) The court further stated, "If the court determines proper cause did not exist, motive evidence would be relevant to prove other issues such as malice." (*Id.* at p. 519, fn. 6.) *Dalrymple* is obviously distinguishable from this case, which does not require us to determine whether a party had proper cause to pursue a declaratory relief action.

IV. The Special Motion to Strike Was Properly Granted

Scheuplein contends that the special motion to strike should have been denied because: (1) respondents failed to show that the claims arose from the valid exercise of free speech or petition rights; and (2) there is a probability he will prevail on the merits. We are not persuaded.

Regarding the first prong of section 425.16, subdivision (b), Scheuplein concedes that the claims arose from the exercise of free speech or petition rights, but denies that the rights were validly exercised. He argues that when speech or petition rights are exercised in a manner that violates conflict of interest laws, there can be no valid exercise of constitutional rights. Because the anti-SLAPP statute was enacted in response to the "disturbing increase in lawsuits brought primarily to chill the *valid* exercise of the constitutional rights of freedom of speech and petition for the redress of grievances" (§ 425.16, subd. (a), italics added), Scheuplein argues that section 425.16, subdivision (b)(1) requires respondents to make an initial showing that they did not violate the conflict of interest laws before the burden may be shifted to require him to show a probability of success on the merits. The problem, however, is that because the word "valid" appears only in subdivision (a) but not subdivision (b) of section 425.16, we would alter the burden of proof by applying it to subdivision (b). Clearly, the Legislature knew how to include the word "valid" in subdivision (b) but intentionally did not do so. "We cannot go beyond the plain meaning of the language used to ascribe a meaning to the statute not indicated by its plain language. [Citation.]" (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305.)

Scheuplein's reliance on *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1364 (*Paul*) (disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68) is misplaced. In that case, the moving party defendants conceded in their anti-SLAPP motion that they had illegally laundered the money that was contributed to political campaigns. Given their admission that their activities were illegal, they could not deny that their exercise of free speech rights was

illegal and therefore invalid under section 425.16. But in this case, respondents do not concede that any of their actions were unlawful. As the *Paul* court pointed out, if the plaintiff "cannot demonstrate as a matter of law that the defendant's acts do not fall under section 425.16's protection, then the claimed illegitimacy of the defendant's acts is an issue which the plaintiff must raise *and* support in the context of the discharge of the plaintiff's burden to provide a prima facie showing of the merits of the plaintiff's case." (*Paul*, *supra*, 85 Cal.App.4th at p. 1367.)

We conclude that respondents met their initial burden of showing that the claims arose from the exercise of free speech of petition rights. The burden then shifted to Scheuplein to establish a probability of success on the merits.

A. The Political Reform Act Requires a Material Financial Effect

In relevant part, the Political Reform Act prohibits state and local public officials from making, participating in making, or in any way attempting to use their official positions to influence governmental decisions in which they know or have reason to know they have a financial interest. (Gov. Code, § 87100.)

According to Government Code section 87103, a public official is deemed to have a financial interest when it is reasonably foreseeable that the decision will have "a *material* financial effect, distinguishable from its effect on the public generally" (italics added), on the officer and his or her immediate family, or those named in the statute's "specific list of persons, entities and interests upon which a financial effect will be deemed to be an effect on the officer[.]" (*People v. Honig* (1996) 48 Cal.App.4th 289, 326, fn. 14 (*Honig*).)

Under Government Code section 87105, subdivision (a), city council members may abstain from matters in which they have a financial interest. The statute provides: "A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (1) Publicly identify the financial

interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required. [¶] (2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100. [¶] (3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. [¶] (4) Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue."

B. Government Code Section 1090, Which Does Not Require a Material Financial Effect, Applies Only to the Making of Contracts

Government Code section 1090 prohibits city officers or employees from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." Government Code section 1090's provisions are more specific than those of the Political Reform Act in that they apply only "to the *making of governmental contracts* while the latter apply to making, participation in making, or in any way attempting to use an official position to influence, any governmental decision. ([Gov. Code,] § 87100.) While the definition of making a contract is defined broadly under section 1090, it is not nearly as broad as the behavior at which the conflict-of-interest provisions of the [Political Reform Act] are aimed. [Citation.]" (*Honig, supra*, 48 Cal.App.4th at p. 329, italics added.)

Because a violation of Government Code section 1090 "can occur only with respect to the *making of contracts*, it is not unreasonable for the Legislature to proscribe more harshly *any* financial interest in the contract being made." (*Honig, supra*, 48 Cal.App.4th at p. 329, italics added.) Accordingly, "a felony violation of [Government Code] sections 1090 and 1097 can be committed where an official has *any* financial interest, however small or contingent, *in a contract* while a misdemeanor violation of the [Political Reform Act] requires a *material* financial interest." (*Ibid.*, italics added.)

However, it is not always clear when a public officer will be deemed to have a financial interest in a contract. Under Government Code section 1091, public officers are not deemed financially interested in a contract if they have only a remote interest that is properly disclosed and their vote is not necessary for the approval of the contract. The remote interest exception set forth in Government Code section 1091, subdivision (a) provides: "An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest." The rules for determining whether the public officer's interest in a contract qualifies as a remote interest are set forth in Government Code section 1091, subdivision (b).

C. Scheuplein Seeks Only Injunctive Relief

As previously stated, the Political Reform Act may be enforced by private actions for injunctive relief. (Gov. Code, § 91003, subd. (a).) In this case, the complaint broadly seeks injunctive relief to halt past and future violations of the Political Reform Act and Government Code section 1090, but identifies by name just one violation, the *Hassen Imports* action, in the complaint's prayer for injunctive relief. The complaint's prayer requests "temporary, preliminary and permanent injunctive relief against Defendants CITY OF WEST COVINA and WEST COVINA COMMUNITY DEVELOPMENT COMMISSION restraining and enjoining such Defendants and each of them from engaging in any future official actions in violation of the Political Reform Act including, but not limited to, setting aside . . . as contrary to Gov't.C. §§ 1090 and 87100 and in conflict of interest, all of the Defendants' above-described action including, but not limited to, the CONCERTED CONFLICT OF INTEREST ACTIONS as alleged hereinabove including, but not limited to, the filing of the underlying lawsuit for Breach

of Contract and Breach of Payment on Guaranty against the HASSEN PARTIES, and ordering the underlying lawsuit dismissed, pursuant to Gov't.C. § 91003(a)."

With regard to the complaint's Government Code section 1090 allegations, the prayer seeks in general terms to set aside the "actions" taken in violation of the statute, but does not identify a single contract that must be set aside. (Gov. Code, § 1092 [contracts made in violation of Gov. Code, § 1090 may be set aside]; *Klistoff v. Superior Court* (2007) 157 Cal.App.4th 469, 481 [contracts made in violation of the statute are void, not merely voidable]; *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1336 [public entity is entitled to disgorgement when a contract is made in violation of section 1090].) At oral argument below, when Scheuplein's attorney was asked to identify a contract made in violation of Government Code section 1090, he did not respond.

D. Scheuplein Failed to Establish a Probability of Success

As we read the complaint, we conclude that its main purpose was to enjoin the *Hassen Imports* action, which was the only action specifically identified by name in the prayer for injunctive relief. However, it is well-established that injunctive relief is not available to enjoin ongoing litigation, except to avoid a multiplicity of lawsuits. (§ 526; Civ. Code, § 3423.) Accordingly, we find that Scheuplein has failed to show a probability of prevailing on the complaint's primary claim for injunctive relief regarding the *Hassen Imports* action.

As for the complaint's Government Code section 1090 allegations, as we previously stated, Scheuplein has not identified a single contract that must be set aside as void or any profits that must be disgorged as illegal. The significance of this omission is that there can be no violation of section 1090 unless the disputed decisions involved a contract or the making of a contract. (*BreakZone Billiards v. City of Torrance*, *supra*, 81 Cal.App.4th at p. 1230.) Although the making of a contract is broadly defined under Government Code section 1090 to include activities—such as negotiations, discussions, reasoning, and planning—involved in the making of a contract (*Chapman v. Superior*

Court (2005) 130 Cal.App.4th 261, 274), there must still be some evidence of a contract or the making of a contract in order to establish a violation of section 1090. Scheuplein failed to provide any such evidence in opposition to the motion below.

Although Scheuplein challenged Touhey's participation in several votes to grant variances, he did not show that those variances involved a contract or the making of a contract in violation of Government Code section 1090.

Although Scheuplein challenged Touhey's participation in the decision to renew the city's excess liability insurance policy, he did not show that purchasing a policy through a shared-risk pool (BICEP) violated Government Code section 1090. The evidence that BICEP's general manager, Ken Spiker & Associates, provided $10,000 or more of income to The Michael Touhey Co. does not establish a probability that Touhey or any other person or entity subject to Government Code section 1090 was financially interested in the insurance policy purchased through BICEP.

Although Scheuplein challenged Touhey's presence during a vote to approve a recommendation to purchase certain properties, the record shows that Touhey abstained from the vote after disclosing his lack of interest in the properties and his prior business transactions with the seller. Even though a "public officer cannot escape liability for a section 1090 violation merely by abstaining from voting or participating in discussions or negotiations" (*Thomson v. Call* (1985) 38 Cal.3d 633, 649), in order to establish a probability of success, Scheuplein had to show that the vote was tied to a contract or the making of a contract. (See *BreakZone Billiards v. City of Torrance*, *supra*, 81 Cal.App.4th at p. 1230.) Moreover, to the extent Scheuplein also relied on this vote to establish a violation of the Political Reform Act, in order to establish a probability of success, he had to explain why Touhey's attempts to comply with Government Code section 87105, subdivision (a), which allows city officials to disclose their interest in a transaction and abstain from voting, were insufficient.

Based on the unavailability of injunctive relief to enjoin ongoing litigation, Scheuplein's failure to identify a contract or the making of a contract in which respondents were financially interested, and the lack of any explanation as to how or why

the disputed decisions had a material financial effect on respondents, we conclude that Scheuplein has failed to establish a probability of success on the merits.

V. The Order Awarding Attorney Fees

The trial court awarded respondents over $860,000 in attorney fees and costs for prevailing on their special motion to strike. (§ 425.16, subd. (c); *Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 215 [the fee award to the successful moving party under the anti-SLAPP statute is not discretionary but mandatory].)

On appeal, "[w]e must affirm an award of attorney fees absent a showing that the trial court clearly abused its discretion. (*Track Mortg. Group, Inc. v. Crusader Ins. Co.* (2002) 98 Cal.App.4th 857, 868.) An abuse of discretion is shown when the award shocks the conscience or is not supported by the evidence. (*Id.* at p. 868; *Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545.)" (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549-550.) "[A]n experienced trial judge is in a much better position than an appellate court to assess the value of the legal services rendered in his or her court, and the amount of a fee awarded by such a judge will therefore not be set aside on appeal absent a showing that it is manifestly excessive in the circumstances. [Citation.]" (*Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 782.)

Scheuplein contends that it was "patently unreasonable" to award attorney fees of "almost one million dollars for only 18 months work on a case that never proceeded past the pleading stage." He argues that the award was erroneously based on billings for services that were excessive, duplicative, related to other matters (including unsuccessful discovery motions), clerical in nature, and rendered illegible by redaction. He further argues that the trial court arbitrarily reduced the amount of the fee award, making it "impossible to determine what the trial court found unreasonable or not."

In the context of special motions to strike, we agree that this was a large attorney fee award. However, Scheuplein does not mention the trial court's explanation that this award, although seemingly excessive, was reasonable under the circumstances of this

case. The trial court stated: "In a 'routine' action the court would agree that the amount of hours billed for the foregoing services appears to be excessive on its face. This case, and the related action of City of West Covina v. Hassen Imports Partnership, however, cannot be characterized as 'routine' by any stretch of the imagination. The court finds that this litigation has been extremely contentious from the beginning, has involved numerous very well qualified attorneys representing each of the parties, has required without question the appointment and reference of numerous disputes to a discovery referee, has already involved several trips to the Court of Appeal, and the unique nature of the legal issues raised and the complexity of the legal, procedural, and factual issues herein have made the adjudication of this action uniquely challenging. The court invites counsel for plaintiff to provide further explanation as to why the hours claimed by counsel for defendants is claimed to be unreasonable, perhaps by explaining the number of hours the various attorneys for plaintiff billed for performing legal services on the same issues and proceedings as those being questioned."

Moreover, Scheuplein does not mention the trial court's detailed, nine-page, single-spaced discussion of Scheuplein's objections to the fee requests. Rather than explain why he believes the trial court's factual determinations are not supported by the record, Scheuplein simply repeats on appeal the same objections that were rejected below. In short, his brief is nothing more than a request that we reevaluate the evidence and enter different findings.

We conclude Scheuplein has not demonstrated that the trial court abused its discretion. "'It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings. The reviewing court is not called upon to make an independent search of the record where this rule is ignored. [Citation.]' [Citation.] 'A claim of insufficiency of the evidence to justify findings, consisting of mere assertion without a fair statement of the evidence, is entitled to no consideration, when it is apparent, as it is here, that a substantial amount of evidence was received on behalf of the respondents. Instead of a fair and sincere effort to show that the trial court was wrong, appellant's brief is a mere challenge to respondents to prove that

the court was right. And it is an attempt to place upon the court the burden of discovering without assistance from appellant any weakness in the arguments of the respondents. An appellant is not permitted to evade or shift his responsibility in this manner.'" (*Grand v. Griesinger* (1958) 160 Cal.App.2d 397, 403.) Given that the trial court's ruling is presumed to be correct, we will not consider Scheuplein's undeveloped contentions. (See *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 710-711.)

We next turn to Scheuplein's legal challenge to the city's and the commission's attorney fee awards. Scheuplein argues that in actions brought under the Political Reform Act, the city and the commission are ineligible to recover their attorney fees under section 452.16, subdivision (c), because they could not recover their fees under Government Code section 91012. Government Code section 91012 authorizes the court to award attorney fees to the prevailing party other than an agency, and it is undisputed that because the city and the commission are agencies within the meaning of the Government Code section 82003, they may not recover their attorney fees under Government Code section 91012. Given that the city and the commission may recover attorney fees under section 452.16, subdivision (c) but not under Government Code section 91012, Scheuplein contends that the resulting conflict must be resolved under Government Code section 81013, which states in part that "[i]f any act of the Legislature conflicts with the provisions of this title, this title shall prevail."

We are not persuaded, however, that there is a conflict in this case that must be resolved under Government Code section 81013. The first sentence of Government Code section 81013 provides, "[n]othing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title." When the first sentence is read in conjunction with the second sentence ("[i]f any act of the Legislature conflicts with the provisions of this title, this title shall prevail"), it appears that Government Code section 81013 applies to conflicts arising from the imposition of additional requirements on persons subject to the Political Reform Act. As section 425.16, subdivision (c)'s mandatory attorney fee provision does not appear to impose any additional requirements

on persons subject to the Political Reform Act that would prevent them from complying with its provisions, we are not persuaded there is a conflict in this case that must be resolved under Government Code section 81013. We therefore conclude that Scheuplein has failed to show that the city's and council's attorney fee awards are prohibited by the Political Reform Act.

As they are entitled to do, respondents request attorney fees on appeal. (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785 [attorney fees on appeal are recoverable under § 425.16, subd. (c)].) We direct the trial court to determine the amount of the fees recoverable by respondents on appeal. (*Ibid.*)

DISPOSITION

The judgment of dismissal and order awarding fees and costs are affirmed. Respondents are awarded their costs and attorney fees on appeal in an amount to be determined by the trial court.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.